

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
UA SAU 3/2020

25 February 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 40/16, 42/16, 34/5 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and other cruel, inhuman and degrading treatment against Mr. **Waleed bin Sami Abu al-Khair**.

Mr. Waleed Abu Al-Khair is a Saudi Arabian national, born on 17 June 1979. He is a human rights lawyer and the founder and Director of Monitor of Human Rights in Saudi Arabia (MHRSA), an organisation that documents human rights violations in the country. He has provided legal representation to many alleged victims of human rights violations and was awarded the human rights Olof Palme Prize in 2012. Mr. Abu al-Khair has previously been the subject of communications sent to your Excellency's Government on 22 December 2017 (SAU 12/2017), 1 July 2016 (SAU 4/2016), 8 December 2014 (SAU 14/2014), 24 April 2014 (SAU 5/2014) and 3 May 2012 (SAU 7/2012). In addition, he was also the subject of Opinion No. 10/2018 of the Working Group on Arbitrary Detention.

According to the information received:

In March 2012, the Ministry of Interior banned Mr. Abu al-Khair from traveling outside of the country. In October 2013, Mr. Abu al-Khair was arrested for hosting a weekly gathering (diwaniya) at his home to discuss social issues in Saudi Arabia, defending those who had been punished for speaking out, and for signing a letter that criticised authorities for imprisoning a group of activists who had peacefully advocated for democratic reform. While his trial was ongoing, Mr. Abu al-Khair was re-arrested, by order of the Minister of Interior, on 15 April 2014, for refusing to sign a pledge promising to stop his human rights advocacy.

Mr. Abu al-Khair was tried by the Specialized Criminal Court in 2014, under the 2014 Penal Law for Crimes of Terrorism and its Financing, which was ratified halfway through Mr. Abu al-Khair's trial. His charges included disobeying the ruler and seeking to remove his legitimacy, insulting the judiciary and questioning the integrity of judges, setting up an unlicensed organisation, harming the reputation of the State by communicating with international organisations and preparing, storing and sending information that harmed public order. The use of the 2014 Penal Law for Crimes of Terrorism and its Financing was contested because (1) the accusations against Mr. Abu al-Khair related to peaceful statements against the harsh and unjust sentencing of other Saudi Arabian individuals, (2) the counter-terrorism law was absent from his charge sheet, and (3) the counter-terrorism law came into effect after Mr. Abu al-Khair's trial had commenced. Despite these arguments, Mr. Abu al-Khair was found guilty and sentenced to 15 years in prison, which he is currently serving in Dhahban Central Prison. His prison sentence will be followed by a 15-year travel ban. Mr. Abu al-Khair must also pay a fine of 200,000 Saudi Riyals (approx. 53,320 USD).

While at Dhahban Central Prison, Mr. Abu al-Khair, who suffers from type 2 diabetes and a chronic colon condition, has undergone several hunger strikes to protest the reported denial of adequate medical treatment for his health conditions. He has allegedly been repeatedly subjected to torture and other cruel, inhuman and degrading treatment including forced sleep deprivation, beatings, and solitary confinement. Mr. Abu al-Khair has also been denied access to a lawyer, family visits and food.

On 26 November 2019, Mr. Abu al-Khair was placed in solitary confinement and banned from accessing his books. Authorities did not give a reason for this decision. In response, Mr. Abu al-Khair began an open-ended hunger strike on that same day, which exacerbated his medical problems. On 9 January 2020, Mr. Abu al-Khair was transferred to King Fahd Hospital as a result of his deteriorating health condition. At the hospital he was reportedly force-fed and there are concerns as to whether he was provided with proper health care for the

rest of his chronic conditions. Mr. Abu al-Khair was returned to solitary confinement on 14 January 2020, where he continued to be denied appropriate medical treatment for his diabetes and chronic colon condition. On 25 January 2020, Mr. Abu al-Khair was urgently transferred back to King Fahd Hospital and has not been heard from since that time. A former client of Mr. Abu al-Khair, joined the hunger strike on 11 December 2019. He was also transferred to King Fahd Hospital on 25 January 2020 and has not been heard from since.

While we do not wish to prejudge the accuracy of the facts alleged, we would like to raise our concerns that, if confirmed, the allegations may amount to violations of the right to life; the right to fair trial; the right to not to be arbitrarily arrested or detained; and the right not to be tortured or otherwise ill-treated under articles 3, 5, 9, and 10 of the Universal Declaration of Human Rights; articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Saudi Arabia on 23 September 1997; as well as articles 5, 8, 13 and 15 of the Arab Charter on Human Rights, to which Saudi Arabia has been a State Party since 2009.

We are appealing to Your Excellency's Government that the relevant authorities ensure that the right of Mr. Abu al-Khair not to be tortured or subjected to other cruel, inhuman and degrading treatment is fully protected. The right to be free from torture under article 5 of the Universal Declarations forms part of customary international law and is universally binding on States, including the Kingdom of Saudi Arabia. Your Excellency's government also accepted the prohibition against torture, by ratifying the Convention against Torture and the Arab human rights Charter (articles 13 and 15). The international prohibition of torture is absolute and may not be derogated under any circumstance. This includes the right to medical attention while in detention. There is also a general prohibition on extended periods of solitary confinement while in detention, as prolonged isolation may amount to torture.¹ We refer your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Mandela Rules"), adopted in General Assembly resolution 790/175. In particular, we draw your attention to Rules 24, 25, 27, 30, and 34, regarding prisoner health, access to medication and treatment facilities, and examinations for signs of torture.

In this connection, we wish to bring your Excellency's Government attention to the World Medical Assembly's Declaration of Malta on Hunger Strikes (adopted in November 1991, revised in October 2006), which emphasizes the duty of all physicians to, inter alia, act ethically (Principle 1) and respect an individuals' autonomy (Principle 2). Guideline 13 states that: "Forcible treatment is never acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment." The Special Rapporteur on the right to health, jointly with the Special Rapporteur on torture, have reminded States that acts or threats of

¹ A/63/175, paras 56, 77.

physical or psychological coercion, including forced-feeding, against individuals who have opted for the extreme recourse of a hunger strike may constitute cruel, inhuman or degrading treatment, which in turn may amount to torture. The best way to respond to hunger strikes is to address the underlying human rights violations that are the basis of the protest. Authorities have a duty to look for solutions to extreme situations created by a hunger strike, including through good faith dialogue about the grievances, and always respecting the rights of those who use this form of protest, including their rights to health and informed consent.

We also draw your attention to Mandela Rule 43, 44, 45, and 46, regarding the prohibition on indefinite or prolonged solitary confinement, noting the prohibition of imposing solitary confinement on prisoners with physical disabilities when their conditions would be exacerbated by such measures, as well as the need for health-care personnel to examine those in solitary confinement on a daily basis.

We remind your Excellency's Government that victims of torture and other ill-treatment must have the right to lodge a complaint about their treatment while held in custody. Any allegation in this regard must be promptly followed through by an impartial examination by a body that is independent of the alleged perpetrator. Whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the CAT imposes an obligation on the State to investigate. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate reparation.

Furthermore, we respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, all of which stipulate that States must ensure that any measures taken to combat "terrorism" and "violent extremism", including incitement of and support for "terrorist" acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

We also recall states' obligation to take all necessary measures to ensure that the rights of human rights defenders are not impinged upon under the guise of national security in retaliation for their lawyering, reporting, and other human rights related activities. Since 2001, civil society space has been shrinking, and civil society actors face defamation, harassment, spurious charges, and the criminalisation of peaceful actions. Globally, there is an increasing trend of human rights defenders who express views contrary to the official position of the State face charges related to terrorism or "threats to national security" (A/HRC/40/52). The Human Rights Council has stressed the need to ensure that national security is not used to unjustifiably or arbitrarily restrict the right to

freedom of opinion and expression (A/HRC/7/36). Legitimate expression of opinions or thought must not be criminalised. Measures aimed to regulate the existence and work of civil societies and human rights defenders must comply with the requirements of proportionality, necessity, and non-discrimination. In particular, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism's (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. Any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offense.

We would also like to bring to the attention of your Excellency's government the Report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following his visit to Saudi Arabia (A/HRC/40/52/Add.2) and the specific recommendations contained therein pertaining to the use of exceptional courts in counter-terrorism cases, the right of full and unimpeded access to legal counsel and the lack of precision and clarity in the domestic legislation governing terrorism.

Lastly, we wish to recall that arbitrary arrest and detention are prohibited under article 9 of the UDHR and article 8 of the Arab Charter.² As the Working Group on Arbitrary Detention previously underlined in a communication to your Excellency's government, based on article 11 of the Universal Declaration, a law that was not in force at the time of the commission of impugned acts cannot serve as the legal basis for detention or imprisonment as punishment for said acts.³ Thus, the 2014 Penal Law for Crimes of Terrorism and its Financing cannot provide a legal basis for Mr. Abu al-Khair's arrest, conviction, or sentencing. In April 2018 the Working Group found that Mr. Abu al-Khair was arbitrarily deprived of his liberty for legitimate exercising rights or freedoms guaranteed under articles 13, 19 and 20 of the Universal Declaration; that Mr. Abu al-Khair's right to a fair trial was violated to such an extent that it rendered his deprivation of liberty arbitrary; and that Mr. Abu al-Khair's deprivation of liberty constituted a violation of article 2 and 7 of the Universal Declaration on the grounds of

² See *also* General Assembly resolution 72/180, fifth preambular paragraph, Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9.

³ A/HRC/WGAD/2018/10, para. 42 (citing Art. 11(2) UDHR).

political discrimination and because of his status as a human rights defender.⁴ In concluding its report to your Excellency's government, the Working Group requested that the Government of Saudi Arabia take all steps necessary to remedy the situation of Mr. Abu al-Khair without delay and recommended his immediate release. In view of the above, we respectfully urge your Excellency's Government to take all steps necessary to ensure that Mr. Abu al-Khair is released and not subjected to torture or other cruel, inhuman or degrading treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal grounds for the arrest and detention of Mr. Abu al-Khair and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration.
3. Please provide information on the current whereabouts and state of health of Mr. Abu al-Khair.
4. Please explain how the trial of Mr. Abu al-Khair was conducted in a manner that was consistent with international fair trial and due process standards.
5. Please provide information about the current conditions of detention of Mr. Abu al-Khair, including material conditions in which continues to be detained, as well as with regard to contact with other prisoners, his family and lawyer, and how these conditions are consistent with the provisions of the UN Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules").
6. Please clarify the reason for which Mr. Abu al-Khair was placed in solitary confinement, how long he has been in solitary confinement, the reason(s) for his continued placement in solitary confinement, and why he may no longer access to his books.

⁴ A/HRC/WGAD/2018/10, para. 69, 77, 83.

7. Please clarify what steps were taken regarding Mr. Abu al-Khair's medical conditions and deteriorating state of health. In particular, please explain why he was taken to King Fahd Hospital; what treatments, tests, examinations, or other medical care he was provided with at the hospital and how these were consistent with the World Medical Assembly's Declaration of Malta on Hunger Strikes. Please further explain why he was taken to the hospital again several weeks later and kindly provide information about Mr. Abu al-Khair's most recent treatment at King Fahd Hospital and about the manner in which this was consistent with the World Medical Assembly's Declaration of Malta on Hunger Strikes.
8. Please provide information as to whether the allegations of torture or other ill-treatment as detailed above were investigated as required under the CAT. If no investigation was carried out, please explain why, and how this is consistent with Saudi Arabia's international human rights obligations under the CAT.
9. Please provide information on how legislation and other provisions in force to regulate the legitimate exercise of the rights to freedom of expression and freedom of religion and belief are compatible with international human rights standards.
10. Please provide information that details how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions enumerated above, as well as with international human rights law.
11. Please indicate, in line with UN General Assembly resolutions 71/205 and 72/190, what measures have been taken to ensure that human rights defenders in Saudi Arabia are able to carry out their legitimate work, and exercise their rights to freedom of expression and freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge your Excellency's Government to ensure that Mr. Abu al-Khair receives proper medical attention and that he is released from solitary confinement. We also encourage your government to consider the implementation of the Working Group on Arbitrary Detention's recommendations and release him. Lastly, in the case that investigations related to allegations in this communication support or suggest the allegations to be correct, we urge you to ensure the accountability of any person responsible of the alleged violations.

We would welcome a prompt response to this communication at your earlier convenience. Given the seriousness of the case, and the multiple appeals by the United Nations special procedures in the past, we may consider to publicly express our concerns in the near future. We believe that the information at hand is sufficiently reliable to do so and that the wider public should be alerted to the human rights implications of these allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers